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| 10/621,430      | 07/16/2003  | James D. Shaw        | CDS 5015            | 1736             |

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| EXAMINER |
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WRIGHT, PATRICIA KATHRYN

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| ART UNIT | PAPER NUMBER |
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1743

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09/26/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |                                       |  |
|------------------------------|--------------------------------------|---------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/621,430 | <b>Applicant(s)</b><br>SHAW, JAMES D. |  |
|                              | <b>Examiner</b><br>P. Kathryn Wright | <b>Art Unit</b><br>1743               |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) 15-45 and 47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/2005; 8/2004; 5/2004; 11/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election of Group I, claims 1-14, and 46 in the reply filed on August 22, 2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election **without traverse** (MPEP § 818.03(a)).

2. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### *Drawings*

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "plurality of vertical extending ridges" on the outer cylindrical wall (claim 7), "separate resilient seal" (claim 12) and the "gasket seal" (claim 13) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure

number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "plurality of vertical extending ridges" on the outer cylindrical wall (claim 7), "separate resilient seal" in claim 12 and the "gasket seal" in claim 13.

5. The abstract of the disclosure is objected to because the abstract is too long and contains legal phraseology such as, "means" and "said". Correction is required. See MPEP § 608.01(b). The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal

phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

### ***Claim Objections***

6. Claims 1-14 and 46 are objected to because of the following informalities: claim 1, part (c) recites "...a least...", this should be changed to --at least--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 5-6, 10 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 5 and 10 recite the limitation "the depression". There is insufficient antecedent basis for this limitation in the claim.

Claim 6 depends on claims 3a. There is no claim 3a. For the purposes of examination this claim has been interpreted as depending from claim 4. However, correction by Applicant is required.

Claim 13 recites the limitation "the seal", there is no antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-2 and 8-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Gordon Hoare (GB 2 118 155A).

Horare teaches a closure for a container 1. Specifically, Horare teaches a closure 2 (which includes annular support member 3 and grub screw 22 that act to seal off the channel 20). The closure includes an inner cylindrical wall 19 including first and second ends (top and bottom of closure, respectively) that define a space in which the top surface of the container fits. The closure also includes an outer cylindrical wall 3 opposite the inner cylindrical wall having the first and second ends (top and bottom of closure) to form an outer surface of the closure. The closure of Horare includes a first end wall extending across the first end (top) and includes a recess extending at least partially into the space and a first set of threads disposed on the recess that engage corresponding threads on the grub screw (Fig. 1). The recess has a second end wall (23) located at the bottom that is opposite the first end wall at the top (claim 8). The recess is "adapted to" receive a threaded spindle (i.e., reads on grub screw 22). Furthermore, note that it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so

perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

With respect to claim 2, Horare teaches the closure further comprising a second set of threads (lines 20-24) disposed between the inner and outer cylindrical walls having a direction which is opposite that of the first set of threads.

Regarding claims 10-13, Horare teaches a circumferential rib 7 (reads on plug seal, crush rib and gasket seal since the claims do not set forth any structural details which differentiate it from the sealing circumferential rib of Horare). Horare teaches that the seal 7 maybe detachable from the body of the tube and made from a deformable material. This creates a sealing arrangement between the closure member 2 and tube (see lines 46-72.)

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claims 3-7 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon Hoare (GB 2 118 155A) in view of Daubert et al., (US Patent Pub. No. 2001/0000793), (hereinafter "Daubert").

The teachings of Hoare have been summarized previously, *supra*. Hoare does not teach a closure comprising a plurality of ramp-shaped protrusions or ridges arranged along the radial perimeter of the end wall and which extend in a direction away from the closure. Furthermore, Hoare does not teach the use of dual lead threads. However, the use of ramp-shaped protrusions (claims 4-6) or ridges (claim 7) and dual lead threads (claim 46) in a closure means is considered conventional in the art, see for example, Daubert.

Daubert teaches a closure assembly 46 for a container 30. The closure assembly of Daubert includes a plurality of ramp-shaped protrusions or ridges (no reference no; Figs. 1-2) arranged along the radial perimeter of the end wall and extend in a direction away from the closure that provides a means for gripping by the user during the opening/closing process. Moreover, Dauber does teach the use of conventional dual lead thread formation 100 [paragraph 81].

Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to have included in the closure of Hoare, the plurality of ramp-shaped protrusions or ridges arranged along the radial perimeter for the end wall that extend in a direction away from the closure in order to provide an easy means for gripping by the user during the opening/closing process of the container.



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**Conclusion**


14. No claims are allowed.
15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to P. Kathryn Wright whose telephone number is 571-272-2374. The examiner can normally be reached on Monday thru Thursday, 9 AM to 6 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 24, 2007

pkw

  
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